

EXHIBIT G

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<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. 7 : 3:09CV620 8 vs. : 9 : 10 : 11 : 12 : 13 : 14 : 15 : 16 : 17 : 18 : 19 : 20 : 21 : 22 : 23 : 24 : 25 : COMPLETE TRANSCRIPT OF THE JURY TRIAL BEFORE THE HONORABLE ROBERT E. PAYNE UNITED STATES DISTRICT JUDGE, AND A JURY APPEARANCES: Scott L. Robertson, Esquire Michael G. Strapp, Esquire Jennifer A. Albert, Esquire David M. Young, Esquire Goodwin Procter, LLP 901 New York Avenue NW Suite 900 Washington, D.C. 20001 Craig T. Merritt, Esquire Christian & Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p>1 P R O C E E D I N G S 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, Mr. 6 Michael G. Strapp, and Mr. David Young represent the plaintiff. 7 Mr. Daniel W. McDonald, Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent 9 the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Yes, Your Honor, plaintiff is. 11 MR. McDONALD: Yes, Your Honor. Thank you. 12 THE COURT: All right. Good morning, ladies and 13 gentlemen. On behalf of the Court and counsel and the parties, 14 I'd like to thank you for your participation this morning in 15 one of the most important civic duties that citizens of our 16 country have. 17 We are a society which has chosen to rule itself in 18 accord with the rule of law, and we have taken in our 19 Constitution and our laws measures to make sure that we have an 20 effective legal system by which people can resolve their 21 disputes in court rather than in the streets, and if we did not 22 have the service of jurors to make the sacrifices that jurors 23 are called upon to do so, then our system of justice that is 24 administered in accord with our Constitution and our statutes 25 could not exist.</p>
<p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 And so what you are called upon to do is a public 2 duty of the highest order which, of course, all of us know 3 entail sacrifices for you and for your families and for your 4 employers and imposes burdens upon you beyond that of the 5 ordinary responsibilities that you have which are already 6 significant, and all of us know that. 7 This case involves a dispute over patents. There 8 are -- the plaintiff here is ePlus, Incorporated, or Inc., and 9 ePlus, whose lawyers are sitting over here, has some patents 10 that are issued by the United States Patent Office, a process 11 that is sanctioned and approved by the Constitution of the 12 country and the laws of the nation, and the patents all are 13 long-numbered. 14 They have six figures, and, in fact, I expect most of 15 us would like to earn incomes in accord with the size of the 16 numbers of these patents, but they are referred to by three 17 small digits, the last three digits of the patent. I don't 18 know that any of you know anything about these patents, but I 19 want to let you know and understand what these patents are. 20 There's a patent number 6023683 which is called the 21 '683 patent. There's patent number 6055516 or the '516 patent. 22 There's patent number 6505172 or the '172 patent. Sometimes, 23 patents may be referred to, instead of using these short 24 numbers, '516 or '683 as the patents-in-suit. That's just a 25 term that lawyers sometimes use to talk about the patents that</p>

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<p>1 of items and associated information, published by a</p> <p>2 vendor, which includes suppliers, manufacturers, and</p> <p>3 distributors, which preferably includes a part number,</p> <p>4 price, catalog number, vendor name, vendor ID, a</p> <p>5 textual description of the item, and nothing else.</p> <p>6 MS. STOLL-DeBELL: Your Honor, we have that</p> <p>7 exact definition as one of the slides they objected</p> <p>8 to. It is a quote of your claim construction of the</p> <p>9 term "catalog." That is what we intend to use. We</p> <p>10 intend to put on a non-infringement case that our</p> <p>11 product does not meet this definition. That is our</p> <p>12 non-infringement case. We've said this all along.</p> <p>13 Mr. McDonald said it at the Markman hearing</p> <p>14 that we didn't have catalogs. We have like a shopping</p> <p>15 list for the grocery store, not a published catalog.</p> <p>16 We said it in our non-infringement interrogatory</p> <p>17 contentions. We don't have published catalogs.</p> <p>18 Dr. Shamus said it in his expert report. We</p> <p>19 don't have published catalogs.</p> <p>20 THE COURT: I didn't say "published</p> <p>21 catalogs." I decided a collection of items and</p> <p>22 associated information published by a vendor. That's</p> <p>23 different than saying it's a published catalog. And</p> <p>24 you can't say "published catalog" with a view to</p> <p>25 conveying the notion that you have the Sears catalog,</p>	<p>1 THE COURT: All right. Thank you.</p> <p>2 I don't understand, Mr. Robertson, where they</p> <p>3 are going across the line. I really don't.</p> <p>4 MR. ROBERTSON: I'd like to just point out</p> <p>5 the very same slide that was just mentioned by Ms.</p> <p>6 Stoll-DeBell Lawson does not infringe the ePlus</p> <p>7 patent, says "Lawson does not have published</p> <p>8 catalogs."</p> <p>9 THE COURT: Yeah. And they're not going to</p> <p>10 say that. They're not saying that.</p> <p>11 MR. ROBERTSON: Then I would expect this</p> <p>12 slide wouldn't be included.</p> <p>13 THE COURT: No. I just told them. I said</p> <p>14 they are not saying that. They are saying what I</p> <p>15 said, and that's it.</p> <p>16 MR. ROBERTSON: Thank you, Your Honor.</p> <p>17 THE COURT: And the other thing that we're</p> <p>18 doing to do is we're not going to have the closing</p> <p>19 argument in the opening statements. I don't want you</p> <p>20 getting into arguments about why people are wrong in</p> <p>21 making closing statements and what's wrong with the</p> <p>22 expert testimony. You can frame the issues in what</p> <p>23 your expert is going to do.</p> <p>24 The other thing is -- yes, Ms. Stoll-DeBell,</p> <p>25 what else?</p>
<p>1 and that's what we're talking about or anything else.</p> <p>2 MS. STOLL-DeBELL: And I apologize. I</p> <p>3 misspoke, Your Honor. If you look at our slides, we</p> <p>4 say we do not have catalogs published by a vendor.</p> <p>5 This is another slide that they used. That's what</p> <p>6 Dr. Shamos used in his report. That exact language.</p> <p>7 We don't have catalogs published by a vendor.</p> <p>8 THE COURT: You have Lawson does not infringe</p> <p>9 the ePlus patents?</p> <p>10 MS. STOLL-DeBELL: Yes. And I can give you</p> <p>11 the paragraph of Dr. Shamos' report. I can cite you</p> <p>12 to of our interrogatory responses where we said we do</p> <p>13 not have catalogs published by vendors. We do not</p> <p>14 have multiple catalogs. We are arguing that we do not</p> <p>15 meet your definition of "catalog."</p> <p>16 THE COURT: I didn't say it had to be</p> <p>17 multiple catalogs. I said it has to be an organized</p> <p>18 collection of items and associated information. That</p> <p>19 doesn't say "catalogs."</p> <p>20 MS. STOLL-DeBELL: The claims do. The claims</p> <p>21 call for a collection of catalogs, two or more</p> <p>22 catalogs, Your Honor. So you're right. Your</p> <p>23 definition is for a single catalog. If you look at</p> <p>24 the claim language, it actually calls for more than</p> <p>25 one.</p>	<p>1 MS. STOLL-DeBELL: I'm sorry. We will not</p> <p>2 say "published catalogs," but we do intend to argue</p> <p>3 and we have disclosed all throughout this case, that</p> <p>4 our product is not published. It's not published at</p> <p>5 all and is not published by a vendor.</p> <p>6 THE COURT: Well, you have to come up with</p> <p>7 some definition of "published" that doesn't include</p> <p>8 the written or the spoken word because that's what</p> <p>9 I've said it belongs to.</p> <p>10 I'm telling you, I want it understood --</p> <p>11 whether I'm right or wrong, I don't know. I think I'm</p> <p>12 right in the way I interpreted it. But I spent a lot</p> <p>13 of time and effort, and so did you--all, in giving the</p> <p>14 terms the meaning I thought they had. And that's</p> <p>15 going to be the terms that are going to be used. And</p> <p>16 no amount of workaround is going to happen.</p> <p>17 And the consequence of a workaround is going</p> <p>18 to be this: If I find that you are just -- and I've</p> <p>19 had this problem. I've never had to say this before.</p> <p>20 But if I find any more of what I've encountered, which</p> <p>21 is trying to do indirectly what I've said you can't do</p> <p>22 directly, and I'm not talking about you personally,</p> <p>23 I'm talking about your side, then the consequence is</p> <p>24 going to be is I'm inclined to grant a motion for</p> <p>25 judgment as a matter of law for the other side on the</p>

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<p>1 theory that that's an appropriate sanction for 2 repeated disobedience of the Court's directives 3 because I can't conduct a trial being constantly on 4 the concern that somebody is trying to come in the 5 back door. 6 Now, if I did it wrong, you-all have recourse 7 to that in the federal circuit, and that's fine, but I 8 want you to understand I don't deal with things that 9 way. 10 MS. STOLL-DeBELL: I understand, Your Honor, 11 and I would like to remind you this came up at the 12 pretrial conference as well. We have not taken issue 13 with the meaning of the term "published." Dr. Weaver 14 has said that published means originated, and we 15 intend to cross-examine him on that. I asked him 16 about it in his deposition. And Dr. Shamos gave a 17 rebuttal report that "published" does not mean 18 originated. 19 THE COURT: I don't care what the experts 20 say. It's what the Court says that's the issue and 21 you-all didn't call upon me to determine the meaning 22 of "published." Now, it's not unheard of that courts 23 have to make claim construction interpretations during 24 the trial. 25 I haven't gone back, I think I did this once</p>	105	<p>1 back. But I don't want, and I think I've told you 2 this before, but some of the things that have been 3 said recently suggest to me that maybe you-all 4 contemplate a commingling. And I don't want a 5 commingling. 6 That way the Rul3 50 issues are very cleanly 7 and crisply dealt with, the record is as it needs to 8 be, and it will be easier for the jury to understand 9 what happens when I tell them that preponderance of 10 the evidence is how they have to decide infringement. 11 And clear and convincing evidence is how they have to 12 decide invalidity. All right. 13 MR. ROBERTSON: Your Honor, may I briefly 14 address that? I want to make sure I don't run afoul 15 of Your Honor's ruling. 16 THE COURT: Why are you dealing with 17 invalidity? Don't you anticipate. You can't 18 anticipate and start trying your response to 19 invalidity in the early days of the case because your 20 foot is then off base. Does that make it clear? 21 MR. ROBERTSON: It does, but let me just 22 raise the context of this, Your Honor. The inventors 23 are going to come forward and tell how they developed 24 their invention. That is the subject matter of these 25 patents. Part of it is a development of a system that</p>	107
<p>1 before, and looked at the ordinary meaning of the word 2 "published" in the dictionary, and that's what we're 3 going to use because nobody has taken the view that 4 "published" means anything other than what it means. 5 MS. STOLL-DeBELL: It is our position it has 6 the ordinary meaning, too, Your Honor. To the extent 7 that Dr. Weaver says it doesn't, we intend to 8 cross-examine him on that. 9 THE COURT: You sure can. 10 MS. STOLL-DeBELL: Okay. 11 THE COURT: And that's fine. 12 Anything else on that point? 13 MS. STOLL-DeBELL: I don't think so. 14 THE COURT: You modify your slides 15 accordingly. 16 Now, let's keep in mind the order of things. 17 It's ePlus' responsibility to prove infringement, and 18 cross-examination on infringement is not a time to 19 develop invalidity. I'm not going to hear that that 20 way. I want it all clean, all the evidence cleanly, 21 crisply and organizedly presented on the issue of 22 infringement. 23 If you need to call witnesses back to talk to 24 them about invalidity, you can do that. Any witness 25 who is here and whose testimony you need, you can have</p>	106	<p>1 they are also the inventors on, at least two of the 2 three inventors were inventors on, and they are going 3 to say how in part they took that system and made 4 changes and modifications to solve problems that are 5 the subject matter of the patents that have to be 6 addressed here. 7 THE COURT: Well, that goes to the issue of 8 whether it's new and useful. 9 MR. ROBERTSON: Well, it goes to the issue of 10 what the inventors actually invented and how they went 11 around solving a problem. Solving a problem is really 12 what invention is all about. I've never been involved 13 in a patent case where the inventors couldn't come 14 forward and say -- 15 THE COURT: Mr. Robertson, I made a clear 16 statement, and you stay within those bounds. And 17 you're smart enough to figure out how to ask those 18 questions that way. If what you're trying to do is 19 somehow use the inventors in anticipation of an 20 invalidity defense, you can't do that. You can bring 21 them back and you can put on that testimony after he's 22 put on invalidity evidence. 23 Now, that's the way cases are tried, patent 24 or otherwise. You have the burden, you have an issue, 25 and you have got to prove it, and you're staying</p>	108

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<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. : 3:09CV620 7 vs. : : 8 LAWSON SOFTWARE, INC. : January 11, 2011 : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 Jennifer A. Albert, Esquire 19 David M. Young, Esquire 20 Goodwin Procter, LLP 21 901 New York Avenue NW 22 Suite 900 23 Washington, D.C. 20001 24 Craig T. Merritt, Esquire 25 Christian & Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p>990 992 1 PROCEEDINGS 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, Mr. 6 Michael G. Strapp, and Mr. David Young represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent 9 the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Plaintiff is, Your Honor. 11 MR. McDONALD: Yes, we are, Your Honor. 12 THE COURT: What did you all need to talk about? 13 MS. STOLL-DeBELL: We actually resolved it, Your 14 Honor, between the time we that mentioned -- 15 THE COURT: Tell them to bring the jury in. What do 16 we have this morning? 17 MR. ROBERTSON: The first witness we're calling this 18 morning is Mr. Keith Lohkamp, Your Honor. He's a Lawson 19 employee. I have a number of binders associated with the 20 witnesses this morning. I want to make sure my paralegal -- 21 oh. 22 23 (Jury in.) 24 25 THE COURT: Good morning, ladies and gentlemen. All</p>
<p>991 1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>993 1 right, we have a witness. Next witness. 2 MR. ROBERTSON: Mr. Keith Lohkamp. 3 THE COURT: All right, Keith Lohkamp. 4 5 KEITH LOHKAMP, 6 a witness, called by the plaintiff, having been first duly 7 sworn, testified as follows: 8 DIRECT EXAMINATION 9 BY MR. ROBERTSON: 10 Q Good morning, Mr. Lohkamp. 11 A Good morning. 12 Q Mr. Lohkamp, you are a Lawson Software employee; correct? 13 A Yes, I am. 14 Q And you are a product strategist for supply chain 15 management; correct? 16 A Yes. 17 THE COURT: Can we get the witness to spell his last. 18 Q Can you please spell your last name, sir, for the record. 19 A It's L-o-h-k-a-m-p. 20 Q Can you explain to the jury essentially what supply chain 21 management is? 22 A Supply chain management involves the procurement of goods 23 and services and the management of the inventory related to 24 managing those goods. It also includes, can include the sell 25 side, so selling those goods and services as well.</p>

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<p>1082</p> <p>1 And this questioning goes to directly to</p> <p>2 that. Where did this information originate? The</p> <p>3 organized collection. Who created that?</p> <p>4 MR. ROBERTSON: There's no "who created it"</p> <p>5 in your construction, Your Honor.</p> <p>6 THE COURT: I don't understand where the</p> <p>7 "who" is unless you're trying to establish that</p> <p>8 "published by a vendor" means selecting something to</p> <p>9 put in the item master. Is that what you're trying to</p> <p>10 show?</p> <p>11 MS. STOLL-DeBELL: I'm trying to show that</p> <p>12 Lawson's item master is not published by a vendor.</p> <p>13 The organized collection of items is something that is</p> <p>14 created by Lawson's customer, not by a vendor. So</p> <p>15 it's selected, it's organized, all of that stuff is</p> <p>16 done by the customer not a vendor.</p> <p>17 And, therefore, and for other reasons as</p> <p>18 well, it's not published by a vendor. It's</p> <p>19 something --</p> <p>20 THE COURT: You're offering this evidence to</p> <p>21 support your view that placement of items in the item</p> <p>22 master is not a catalog; is that right? Because the</p> <p>23 items in the catalog are not published by a vendor; is</p> <p>24 that right?</p> <p>25 MS. STOLL-DeBELL: Yes, and the item master</p>	<p>1084</p> <p>1 BY MS. STOLL-DeBELL:</p> <p>2 Q You probably need me to ask my question again?</p> <p>3 A Yes, please.</p> <p>4 Q I'll do the best I can.</p> <p>5 Who selects the items that are included in item</p> <p>6 master?</p> <p>7 MR. ROBERTSON: Can I have a running</p> <p>8 objection to this line of questioning because I just</p> <p>9 don't want to keep interrupting?</p> <p>10 THE COURT: It's the same one I just</p> <p>11 overruled. So you obviously have that. She's just</p> <p>12 repeating the question that she had. Go ahead.</p> <p>13 And running objections to questions are not</p> <p>14 good things because nobody knows where the running</p> <p>15 stops. So if you have an objection to a question, you</p> <p>16 have to raise it, but on this one, you've already</p> <p>17 raised it.</p> <p>18 So who in your understanding selects the</p> <p>19 items to be put in the item master?</p> <p>20 THE WITNESS: The customer selects the items</p> <p>21 to be put in the item master.</p> <p>22 Q Why doesn't Lawson select the items that go into</p> <p>23 the item master?</p> <p>24 A Because we don't know what our customers purchase,</p> <p>25 and we don't have visibility into the items they have</p>
<p>1083</p> <p>1 itself is not published by a vendor.</p> <p>2 THE COURT: And that's basically your defense</p> <p>3 in this case, isn't it?</p> <p>4 MS. STOLL-DeBELL: It's one of them.</p> <p>5 THE COURT: Well, it's the principal one,</p> <p>6 isn't it.</p> <p>7 MS. STOLL-DeBELL: The principal one in that</p> <p>8 item master is not a catalog published by a vendor,</p> <p>9 yes.</p> <p>10 THE COURT: The principal defense to the</p> <p>11 issue of catalog, isn't it?</p> <p>12 MS. STOLL-DeBELL: Yes.</p> <p>13 THE COURT: Objection overruled, but the jury</p> <p>14 can make its decision on the fact whether it's</p> <p>15 admitted only to do -- not for the definition of</p> <p>16 "catalog," but having to do with published by a</p> <p>17 vendor. And those are issues that you'll have to</p> <p>18 argue based on the testimony and the record.</p> <p>19 MS. STOLL-DeBELL: Thank you.</p> <p>20 THE COURT: That's all it's admitted for,</p> <p>21 ladies and gentlemen.</p> <p>22 Who puts it in the catalog doesn't change the</p> <p>23 definition of the catalog that the Court has construed</p> <p>24 because the Court's construction doesn't mention who</p> <p>25 puts the catalog together. All right.</p>	<p>1085</p> <p>1 on contract or want to purchase.</p> <p>2 Q What's the purpose of item master?</p> <p>3 A The purpose of the item master is to create a list</p> <p>4 of goods and services that our customers are typically</p> <p>5 going to want to purchase or maintain in inventory.</p> <p>6 And so the goal is to be able to make that list</p> <p>7 available to their employees.</p> <p>8 Q Is it possible for a customer to decide to include</p> <p>9 every item a vendor sells in the item master?</p> <p>10 MR. ROBERTSON: Objection. It calls for</p> <p>11 speculation, Your Honor.</p> <p>12 THE COURT: Well, if he knows.</p> <p>13 Do you know that?</p> <p>14 THE WITNESS: Yes, I do know that.</p> <p>15 THE COURT: All right.</p> <p>16 A It is possible, but our customers typically --</p> <p>17 THE COURT: All she asked is: Is it</p> <p>18 possible?</p> <p>19 A Yes, it's possible.</p> <p>20 Q Have you ever seen one of your customers or are</p> <p>21 you aware of a situation where one of your customers</p> <p>22 decided to include every single item a vendor sells in</p> <p>23 their item master?</p> <p>24 A I'm not aware of that situation.</p> <p>25 Q Do you encourage customers to include all the</p>

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<p>1490</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. 7 : 3:09CV620 8 vs. : 9 : 10 : 11 : 12 : 13 : 14 : 15 : 16 : 17 : 18 : 19 : 20 : 21 : 22 : 23 : 24 : 25 : 26 : 27 : 28 : 29 : 30 : 31 : 32 : 33 : 34 : 35 : 36 : 37 : 38 : 39 : 40 : 41 : 42 : 43 : 44 : 45 : 46 : 47 : 48 : 49 : 50 : 51 : 52 : 53 : 54 : 55 : 56 : 57 : 58 : 59 : 60 : 61 : 62 : 63 : 64 : 65 : 66 : 67 : 68 : 69 : 70 : 71 : 72 : 73 : 74 : 75 : 76 : 77 : 78 : 79 : 80 : 81 : 82 : 83 : 84 : 85 : 86 : 87 : 88 : 89 : 90 : 91 : 92 : 93 : 94 : 95 : 96 : 97 : 98 : 99 : 100 : 101 : 102 : 103 : 104 : 105 : 106 : 107 : 108 : 109 : 110 : 111 : 112 : 113 : 114 : 115 : 116 : 117 : 118 : 119 : 120 : 121 : 122 : 123 : 124 : 125 : 126 : 127 : 128 : 129 : 130 : 131 : 132 : 133 : 134 : 135 : 136 : 137 : 138 : 139 : 140 : 141 : 142 : 143 : 144 : 145 : 146 : 147 : 148 : 149 : 150 : 151 : 152 : 153 : 154 : 155 : 156 : 157 : 158 : 159 : 160 : 161 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<p>1590</p> <p>1 Q Does that refresh your recollection that this new</p> <p>2 functionality was added with respect to 8.0.3 when</p> <p>3 this release note came out?</p> <p>4 A This reflects -- it does help refresh my memory</p> <p>5 about these particular release notes, yes.</p> <p>6 THE COURT: That wasn't the question. The</p> <p>7 question was: Does it refresh your recollection that</p> <p>8 the new functionality has been added to electronically</p> <p>9 load a vendor file which contains vendor item, unit of</p> <p>10 measure, and unit of price information into the</p> <p>11 purchase order application? Does it refresh your</p> <p>12 recollection on that point?</p> <p>13 THE WITNESS: Yes, it does.</p> <p>14 THE COURT: All right. And did it?</p> <p>15 THE WITNESS: Did it do what?</p> <p>16 THE COURT: Did it do what it said in that</p> <p>17 first sentence that you've been talking about?</p> <p>18 THE WITNESS: Yes, it did, Your Honor.</p> <p>19 THE COURT: All right. Let's go.</p> <p>20 BY MR. ROBERTSON:</p> <p>21 Q The next bullet point says, Item 3 identifies how</p> <p>22 a Lawson item number should be created when adding the</p> <p>23 catalog item to the item master. Do you see that?</p> <p>24 A Yes.</p> <p>25 Q Those are the terms you used, the catalog item,</p>	<p>1592</p> <p>1 A That's correct.</p> <p>2 Q And you would agree with me that that item catalog</p> <p>3 information disclosed by the vendor or the supplier</p> <p>4 through a vendor agreement import process ends up in</p> <p>5 the item master, correct?</p> <p>6 A Say that again.</p> <p>7 Q Yes. The vendor or the supplier who provides this</p> <p>8 item catalog information to the customer can be</p> <p>9 imported through this process we're talking about</p> <p>10 here, this vendor agreement import, into the item</p> <p>11 master?</p> <p>12 MS. STOLL-DeBELL: Objection to form of the</p> <p>13 question. It's unclear.</p> <p>14 MR. ROBERTSON: I'll rephrase, Your Honor.</p> <p>15 THE COURT: All right.</p> <p>16 MS. STOLL-DeBELL: I think he talked about a</p> <p>17 supplier being loaded in.</p> <p>18 MR. ROBERTSON: I'll rephrase the question.</p> <p>19 BY MR. ROBERTSON:</p> <p>20 Q The vendor that has provided the catalog item</p> <p>21 information in a CSV format ends up through this</p> <p>22 process in the item master; isn't that right?</p> <p>23 MS. STOLL-DeBELL: Objection. The vendor --</p> <p>24 the question is unclear.</p> <p>25 THE COURT: Are you asking whether the vendor</p>
<p>1591</p> <p>1 isn't that right, when you made this new release note</p> <p>2 for Version 8.0.3?</p> <p>3 A That's a term that was used by the technical</p> <p>4 writer.</p> <p>5 Q You're not trying to run away from "catalog," are</p> <p>6 you, sir?</p> <p>7 A No. You did ask me "did you use that term," and I</p> <p>8 did not use that term.</p> <p>9 Q I'm sorry. It was an indefinite pronoun. Did</p> <p>10 Lawson use "catalog item" when it did these release</p> <p>11 notes?</p> <p>12 A Yes, it did.</p> <p>13 Q On this import process?</p> <p>14 A Yes.</p> <p>15 Q It's the vendor that are provides the item catalog</p> <p>16 in a CSV format; is that right?</p> <p>17 A That's correct.</p> <p>18 Q The vendor discloses or makes known that item</p> <p>19 information in that CSV format, correct?</p> <p>20 A Discloses to whom?</p> <p>21 Q The customer.</p> <p>22 A To the customer, yes.</p> <p>23 Q And Lawson in this vendor import agreement process</p> <p>24 calls that vendor information "item catalog</p> <p>25 information," right?</p>	<p>1593</p> <p>1 ends up in the item master?</p> <p>2 MR. ROBERTSON: No.</p> <p>3 THE COURT: That's what her objection is and</p> <p>4 I think it's well taken.</p> <p>5 MR. ROBERTSON: Let me rephrase then.</p> <p>6 THE COURT: It's the item that ends up there,</p> <p>7 I think.</p> <p>8 BY MR. ROBERTSON:</p> <p>9 Q The vendor provides the item catalog information</p> <p>10 that ends up in the item master; isn't that right?</p> <p>11 A That is some of the information that ends up</p> <p>12 there.</p> <p>13 Q Why don't you take a look at this vendor import</p> <p>14 price agreement again. Let me see if I can refresh</p> <p>15 your recollection on the process. If you would look</p> <p>16 at the page that ends 428.</p> <p>17 A Sorry about that. I was in the wrong document.</p> <p>18 Q That's all right. Take your time. Do you see</p> <p>19 that page is entitled, Vendor agreement import?</p> <p>20 A That's correct.</p> <p>21 Q And in the first box, it says, Vendor provides</p> <p>22 item catalog in CSV format. Do you see that?</p> <p>23 A That's correct.</p> <p>24 MS. STOLL-DeBELL: Your Honor, he hasn't</p> <p>25 asked him if this refreshes his recollection, and the</p>

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<p>1746</p> <p>1 Honor, to generally how it describes. In fact,</p> <p>2 there's a slide here that I was anticipating Mr.</p> <p>3 McDonald bringing up and we have an objection to</p> <p>4 because we think it pertains to getting legal</p> <p>5 opinions. That has been ruled out of the case. Also</p> <p>6 to attempting to recharacterize or reargue the Markman</p> <p>7 ruling, in which the Court has given a construction.</p> <p>8 So how they generally describe it doesn't</p> <p>9 really matter, Your Honor, and it's going to be a</p> <p>10 reference here to the prosecution of the patents.</p> <p>11 MR. McDONALD: Your Honor, I don't have any</p> <p>12 slides up there. I'm trying to avoid the issues that</p> <p>13 they raised with us at least to get through this</p> <p>14 afternoon on that. I'm not talking about the file</p> <p>15 history at this point.</p> <p>16 I'm asking about after reading the patents,</p> <p>17 generally what's the invention, which I think is very</p> <p>18 helpful to the jury's understanding of a complex case.</p> <p>19 MR. ROBERTSON: The claims define the</p> <p>20 invention, Your Honor. It's the claims that the jury</p> <p>21 is going to have to look at, not some characterization</p> <p>22 of what generally the invention is.</p> <p>23 THE COURT: I think Mr. Robertson is right.</p> <p>24 Sustained.</p> <p>25 BY MR. McDONALD:</p>	<p>1748</p> <p>1 A Because 11 of those 12 claims require two or more</p> <p>2 catalogs and unless you have two or more catalogs, you</p> <p>3 can't infringe those claims.</p> <p>4 Q Do you know whether or not Dr. Weaver agrees with</p> <p>5 you that that infringement would turn on whether or</p> <p>6 not 11 of those 12 claims have multiple catalogs?</p> <p>7 A Well, my recollection from his report is his</p> <p>8 opinion is that they do have catalogs.</p> <p>9 Q Do you understand he would agree with the</p> <p>10 principal, though, that if the Lawson systems did not</p> <p>11 have multiple catalogs, 11 of the 12 claims would not</p> <p>12 be infringed?</p> <p>13 A He should agree with it. I don't know.</p> <p>14 MR. ROBERTSON: Objection.</p> <p>15 THE COURT: Sustained.</p> <p>16 BY MR. McDONALD:</p> <p>17 Q Why don't we go to slide No. 8, please.</p> <p>18 Do you see up on the screen, Dr. Shamos, this is</p> <p>19 another slide that you prepared, correct?</p> <p>20 A Yes.</p> <p>21 Q Well, what are you depicting here in this slide?</p> <p>22 A I'm just reiterating the Court's -- literally the</p> <p>23 Court's construction of the term "catalog."</p> <p>24 Q How did you use this Court construction of the</p> <p>25 term "catalog" in your an analysis?</p>
<p>1747</p> <p>1 Q Can you tell me --</p> <p>2 MR. McDONALD: Can we go to slide No. 6,</p> <p>3 please? Put that up.</p> <p>4 Q Dr. Shamos, you put this slide together as well,</p> <p>5 correct?</p> <p>6 A Yes.</p> <p>7 Q Does this slide up on the screen right now, is</p> <p>8 this displaying your No. 1 reason for non-infringement</p> <p>9 in this case?</p> <p>10 A It is. There are many reasons. There are two</p> <p>11 reasons that I think cover a huge fraction of the</p> <p>12 claims, and we'll go through those two first, and then</p> <p>13 later on when we get into the individual claims, I'll</p> <p>14 be able to give the other reasons.</p> <p>15 Q So what's reason No. 1 of your reasons for</p> <p>16 non-infringement?</p> <p>17 A Well, reason No. 1 is 11 out of the 12 claims</p> <p>18 require a catalog or catalogs. And because Lawson's</p> <p>19 products don't have a catalog, they can't satisfy the</p> <p>20 requirements of at least 11 of the 12 claims.</p> <p>21 Q Why in your opinion do 11 of the 12 claims -- I'll</p> <p>22 withdraw that.</p> <p>23 Why in your opinion do Lawson's systems not</p> <p>24 infringe those 11 claims that you're talking about in</p> <p>25 some?</p>	<p>1749</p> <p>1 A Well, I looked at item master and I tried to</p> <p>2 determine whether item master satisfied the Court's</p> <p>3 construction. And I concluded that it didn't. And so</p> <p>4 therefore it doesn't have a catalog.</p> <p>5 Q So when doing that analysis, did you use the Court</p> <p>6 construction as set forth here on this slide?</p> <p>7 A It's a basic prerequisite of the analysis.</p> <p>8 Q If we could go to the next slide that you put</p> <p>9 together, please. I think this one is not objected</p> <p>10 to.</p> <p>11 So here in this next slide, No. 9, Dr. Shamos, can</p> <p>12 you summarize your reasons why the Lawson system does</p> <p>13 not have a catalog?</p> <p>14 A Yes. Right now we're --</p> <p>15 Q I'll walk you through this step by step here and</p> <p>16 we'll stick with the question and answer format.</p> <p>17 A Yes.</p> <p>18 Q I'll start by saying can you give me a summary of</p> <p>19 why in your opinion the Lawson systems do not have a</p> <p>20 catalog as the Court has defined that term?</p> <p>21 A Well, I think we should just go back to the</p> <p>22 previous slide and go look through the Court's</p> <p>23 construction.</p> <p>24 They are certainly an organized collection of</p> <p>25 items and associated information in item master. So</p>

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<p>1750</p> <p>1 that prong of the construction would be satisfied.</p> <p>2 But that information is not published by a vendor,</p> <p>3 either a supplier, manufacturer or distributor. It's</p> <p>4 carefully handpicked by a customer. A customer</p> <p>5 decides what to import into that item master database,</p> <p>6 and it doesn't constitute a catalog or even multiple</p> <p>7 catalogs.</p> <p>8 Q What is your understanding as to what an item</p> <p>9 master does in the Lawson systems?</p> <p>10 A Item master, I think, is intended to represent the</p> <p>11 universe of items that an employee of a corporation is</p> <p>12 able to buy regardless of what the source may be.</p> <p>13 Q What's your understanding as to what sort of</p> <p>14 information is in the item master in the Lawson</p> <p>15 systems?</p> <p>16 A It has information about items. It would have</p> <p>17 their name, it would have a catalog number, it may</p> <p>18 have an identification of who's selling the item, an</p> <p>19 identification of who manufactured the item. It has</p> <p>20 information about any special pricing terms that are</p> <p>21 available to this particular customer because of</p> <p>22 contracts that they may have entered into with</p> <p>23 suppliers, and other information that the user of the</p> <p>24 system finds useful to associate with particular</p> <p>25 items.</p>	<p>1752</p> <p>1 Q What sort of information does the item master have</p> <p>2 about a customer's inventory of a given item?</p> <p>3 A One piece of information is quantity on hand.</p> <p>4 Another piece of information that be where the item</p> <p>5 can be found, where the inventory is physically</p> <p>6 located.</p> <p>7 Q When you say where it can be found or located, are</p> <p>8 you talking about where at the customer's premises it</p> <p>9 could be located or something else?</p> <p>10 A It may be that -- well, the customer is typically</p> <p>11 going to have information about how much of that</p> <p>12 particular item he has on hand on his premises. He</p> <p>13 generally doesn't know how much a vendor would have</p> <p>14 available.</p> <p>15 Q Are you familiar with how the item descriptions</p> <p>16 are created for purposes of the item master?</p> <p>17 A Not in detail. There's a field in item master</p> <p>18 that allows for a description of a product. Those</p> <p>19 descriptions can be imported from files provided by</p> <p>20 vendors or they can be hand created by the customer.</p> <p>21 Q Have you seen some documents in this case relating</p> <p>22 to Lawson where they refer to features of the Lawson</p> <p>23 systems in terms of being able to load vendor catalog</p> <p>24 data and the like?</p> <p>25 A Yes.</p>
<p>1751</p> <p>1 Q Can you summarize for me the differences between</p> <p>2 the Lawson systems item master and catalogs as the</p> <p>3 Court construed it?</p> <p>4 A Well, a catalog is a compendium of information</p> <p>5 about the things that a vendor is offering for sale.</p> <p>6 THE COURT: I've defined what a catalog is</p> <p>7 and that's the end of it. Whether anybody agrees with</p> <p>8 it, that's the catalog definition.</p> <p>9 MR. McDONALD: Sure.</p> <p>10 THE COURT: We're not going to have him</p> <p>11 defining the catalogs. I've told you-all that before.</p> <p>12 MR. McDONALD: That wasn't my intent.</p> <p>13 THE COURT: Well, he did. He started off</p> <p>14 defining it. So let's don't have it. And I don't</p> <p>15 really want to have to deal with this problem, Mr.</p> <p>16 McDonald. He can testify, but I don't want to have to</p> <p>17 be constantly monitoring whether there's compliance</p> <p>18 with the requirement that the terms are those defined</p> <p>19 by the Court.</p> <p>20 BY MR. McDONALD:</p> <p>21 Q Do you have an understanding as to whether or not</p> <p>22 the item master in the Lawson systems includes</p> <p>23 information about a customer's inventory of a given</p> <p>24 item?</p> <p>25 A Yes.</p>	<p>1753</p> <p>1 Q Given that those documents do use the term</p> <p>2 "catalogs," why is it that you concluded that that</p> <p>3 wouldn't indicate that the item master has multiple</p> <p>4 catalogs?</p> <p>5 MR. ROBERTSON: Objection to the form of that</p> <p>6 question, Your Honor.</p> <p>7 THE COURT: What is objectionable about the</p> <p>8 form? That different documents have different reasons</p> <p>9 or that he can't testify to it or what?</p> <p>10 MR. ROBERTSON: He can't testify and</p> <p>11 characterize what those documents mean and whether</p> <p>12 they do doesn't mean they comply with the Court's</p> <p>13 claim construction because they use the term</p> <p>14 "catalog."</p> <p>15 THE COURT: So the objection to the form of</p> <p>16 the question is that he doesn't have any basis for</p> <p>17 knowing what the author of a particular document</p> <p>18 meant. Is that right, Mr. Robertson?</p> <p>19 MR. ROBERTSON: Yes. Thank you for</p> <p>20 articulating that for me, sir.</p> <p>21 THE COURT: What's your response to that, Mr.</p> <p>22 McDonald?</p> <p>23 MR. McDONALD: I don't think my question was</p> <p>24 asking what the author of the documents meant. I was</p> <p>25 asking basically for how he incorporated his analysis</p>

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<p style="text-align: right;">2797</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. 7 : 3:09CV620 8 vs. : 9 : 10 : 11 : 12 : 13 : 14 : 15 : 16 : 17 : 18 : 19 : 20 : 21 : 22 : 23 : 24 : 25 : 26 : 27 : 28 : 29 : 30 : 31 : 32 : 33 : 34 : 35 : 36 : 37 : 38 : 39 : 40 : 41 : 42 : 43 : 44 : 45 : 46 : 47 : 48 : 49 : 50 : 51 : 52 : 53 : 54 : 55 : 56 : 57 : 58 : 59 : 60 : 61 : 62 : 63 : 64 : 65 : 66 : 67 : 68 : 69 : 70 : 71 : 72 : 73 : 74 : 75 : 76 : 77 : 78 : 79 : 80 : 81 : 82 : 83 : 84 : 85 : 86 : 87 : 88 : 89 : 90 : 91 : 92 : 93 : 94 : 95 : 96 : 97 : 98 : 99 : 100 : 101 : 102 : 103 : 104 : 105 : 106 : 107 : 108 : 109 : 110 : 111 : 112 : 113 : 114 : 115 : 116 : 117 : 118 : 119 : 120 : 121 : 122 : 123 : 124 : 125 : 126 : 127 : 128 : 129 : 130 : 131 : 132 : 133 : 134 : 135 : 136 : 137 : 138 : 139 : 140 : 141 : 142 : 143 : 144 : 145 : 146 : 147 : 148 : 149 : 150 : 151 : 152 : 153 : 154 : 155 : 156 : 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<p style="text-align: right;">2829</p> <p>1 met, there is no infringement.</p> <p>2 To answer your question, I do agree with ePlus's</p> <p>3 position that capability allows for infringement. The second</p> <p>4 question with respect to the specific issue of catalogs is that</p> <p>5 here, there is no catalog. Like I said, both parties agree</p> <p>6 that at some point data that's been drawn from a catalog, a</p> <p>7 vendor catalog and changed is not a catalog.</p> <p>8 THE COURT: But you don't even agree if I put my</p> <p>9 whole catalog in, that I've got a catalog in the item master</p> <p>10 vendor table.</p> <p>11 MS. HUGHEY: I would agree that that would be an</p> <p>12 infringement if that happened, but it does not, nor is it</p> <p>13 capable of happening. That's my point.</p> <p>14 THE COURT: Why isn't it capable of happening? In</p> <p>15 fact, every witness that testified said it is, including Mr.</p> <p>16 Christopherson. What he said was, in words of one syllable,</p> <p>17 sure, that can done, but that isn't the way it's usually used.</p> <p>18 That's what he said.</p> <p>19 MS. HUGHEY: The evidence that was coming in was that</p> <p>20 the item master -- all the evidence that came in about the item</p> <p>21 master is that it is uniquely organized and created by a</p> <p>22 customer, it does not look like a published catalog, it's a</p> <p>23 private collection of personal items, has special price</p> <p>24 information. These are not -- this is a not a catalog, a</p> <p>25 vendor catalog like the Sears catalog. This is a grocery list.</p>	<p style="text-align: right;">2831</p> <p>1 that, and 10,000 vendors and you don't have a catalog of what's</p> <p>2 in there just because it came from multiple sources. That's</p> <p>3 what you are saying. You're saying you can't -- you don't have</p> <p>4 a catalog because it came from 10,000 different vendors or a</p> <p>5 thousand.</p> <p>6 MS. HUGHEY: No, that's not why it's not a catalog.</p> <p>7 It's not a catalog because it doesn't meet the Court's</p> <p>8 definition of catalog. The Court's definition of catalog</p> <p>9 requires an organized collection of items and associated</p> <p>10 information published by a vendor.</p> <p>11 At no point was any of the information pulled from a</p> <p>12 catalog and then transformed, as we've gone through in great</p> <p>13 detail, and then put into the item master, also known as a</p> <p>14 grocery list.</p> <p>15 THE COURT: In fact, that's exactly what Mr.</p> <p>16 Christopherson said did happen under the ETL process that he</p> <p>17 testified to in connection with this exhibit, and the T in that</p> <p>18 is transformation. That is exactly what he did.</p> <p>19 MS. HUGHEY: The transformation is the whole point of</p> <p>20 change. There is a -- everyone agrees that the Sears catalog</p> <p>21 or the Montgomery Ward catalog is a catalog. It comes from</p> <p>22 that point, it is -- it is changed and then put in the item</p> <p>23 master like a grocery list. That is the T. That is what we're</p> <p>24 talking about. It's not the same.</p> <p>25 THE COURT: I don't understand why it isn't.</p>
<p style="text-align: right;">2830</p> <p>1 THE COURT: That isn't the question. Your witness</p> <p>2 testified that the -- that I could put one or more entire</p> <p>3 catalogs into the item master if I wanted to depending on the</p> <p>4 capacity of the item master I bought, and your position is that</p> <p>5 even if I do that, the item master parts list, vendor item list</p> <p>6 isn't a catalog, and I don't understand that at all.</p> <p>7 MS. HUGHEY: Your Honor, the evidence that came into</p> <p>8 this case is that the item master is like a grocery list, and</p> <p>9 so, yes, people were saying in theory -- in context, they were</p> <p>10 talking about what kind of information could be drawn in, but</p> <p>11 in reality, all the evidence came in that that item master is a</p> <p>12 grocery list. It is not a catalog.</p> <p>13 THE COURT: What about something -- you make it sound</p> <p>14 like a grocery list that my wife goes to the store or sends me</p> <p>15 to the store with a list of 20 items. There are hundreds of</p> <p>16 thousands of items in most of these item masters, and they</p> <p>17 came -- all that information came from vendors, and it was --</p> <p>18 and the information -- your user transformed some of it, edited</p> <p>19 some of it and moved some of it, gave some information that's</p> <p>20 not in the catalog such as price because they worked out a</p> <p>21 special price deal, but what's in the catalog that is created</p> <p>22 by the item master is the price, or what's in the item master,</p> <p>23 whatever you want to call it, is the price, for example.</p> <p>24 Now, I don't understand how you can have something</p> <p>25 that's a hundred thousand items, or in many instances more than</p>	<p style="text-align: right;">2832</p> <p>1 MS. HUGHEY: It's not the same because it doesn't</p> <p>2 meet the Court's definition of catalog. The Court's definition</p> <p>3 of catalog is an organized collection of items and associated</p> <p>4 information published by a vendor.</p> <p>5 THE COURT: What is wrong with that? You can't just</p> <p>6 cite the whole thing. You now need to tell me what part of the</p> <p>7 definition it doesn't fit.</p> <p>8 MS. HUGHEY: Yes. Specifically the published by a</p> <p>9 vendor. It requires the items --</p> <p>10 THE COURT: Why isn't it published by a vendor?</p> <p>11 MS. HUGHEY: The items in the item master have never</p> <p>12 been published by a vendor.</p> <p>13 THE COURT: Of course they have. Where did they come</p> <p>14 from in the first place?</p> <p>15 MS. HUGHEY: There was a published vendor catalog.</p> <p>16 THE COURT: And that was published by the vendor.</p> <p>17 MS. HUGHEY: That was.</p> <p>18 THE COURT: Then I go to the catalog, I look at it,</p> <p>19 and then I have Remington shotgun model 12 in there. Well, my</p> <p>20 system won't take a Remington shotgun model 12, so what I do</p> <p>21 is I take that vendor information, and I transform it to RSG</p> <p>22 and 12 so it will fit the number of characters.</p> <p>23 All I've done is transformed the exact data, loaded</p> <p>24 that into my system, and I have my own little catalog there.</p> <p>25 If I want a AK-47 and a Berretta and a long gun, and I take</p>

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<p style="text-align: right;">2849</p> <p>1 THE COURT: Is that what the case holds? That's what</p> <p>2 this case holds -- that's what this case about the travel</p> <p>3 candle holds, that, in fact, there was no evidence that the</p> <p>4 travel candle was used in the infringing way.</p> <p>5 MR. ROBERTSON: There's ample evidence in this case</p> <p>6 that it's used in the infringing way, both from Mr.</p> <p>7 Christopherson and --</p> <p>8 THE COURT: Here's the bottom line. I'm the finder</p> <p>9 of the fact. I would clearly find that there is infringement</p> <p>10 of everything that Dr. Weaver said, that each system infringed</p> <p>11 each claim for the reasons he stated. There isn't any question</p> <p>12 that I would do that.</p> <p>13 But I'm not the finder of the fact. So under these</p> <p>14 facts, under the evidence in this case, don't I have to let the</p> <p>15 jury decide that case and then come back at the end of the day</p> <p>16 and see whether that's right? So what I'm inclined to do is</p> <p>17 reserve judgment on this motion, because I will tell you -- I</p> <p>18 personally am having real trouble deciding why there's any</p> <p>19 defense to infringement at all.</p> <p>20 MR. ROBERTSON: I understand.</p> <p>21 THE COURT: But I believe that I do have to let the</p> <p>22 case go to the jury subject to my ability to control that, and</p> <p>23 I'm going to take this motion under advisement, deny the motion</p> <p>24 of no infringement by Lawson, keep your motion under</p> <p>25 advisement.</p>	<p style="text-align: right;">2851</p> <p>1 THE COURT: All right.</p> <p>2 MS. HUGHEY: Hello, Your Honor. May it</p> <p>3 please the Court. Lawson moves for judgment as a</p> <p>4 matter of law on the issue of invalidity because a</p> <p>5 reasonable jury does not have a reasonable evidentiary</p> <p>6 basis to find for ePlus on the issue.</p> <p>7 At trial documents demonstrated and witnesses</p> <p>8 testified --</p> <p>9 THE COURT: Now, there are three grounds of</p> <p>10 invalidity. One is anticipation.</p> <p>11 MS. HUGHEY: Correct.</p> <p>12 THE COURT: One is obviousness.</p> <p>13 MS. HUGHEY: Correct.</p> <p>14 THE COURT: And the other is written</p> <p>15 description.</p> <p>16 MS. HUGHEY: No, Your Honor, Lawson is not</p> <p>17 asserting written description.</p> <p>18 THE COURT: That was there at one time.</p> <p>19 MS. HUGHEY: Correct.</p> <p>20 THE COURT: That's no longer there. So I</p> <p>21 don't need to deal with that one.</p> <p>22 MS. HUGHEY: Correct.</p> <p>23 THE COURT: So you have anticipation and</p> <p>24 obviousness.</p> <p>25 MS. HUGHEY: Correct, Your Honor. At trial</p>
<p style="text-align: right;">2850</p> <p>1 MR. ROBERTSON: I understand, Your Honor. Thank you.</p> <p>2 THE COURT: All right, now, invalidity. I believe</p> <p>3 that -- Ms. Hughey, are you doing that one, too?</p> <p>4 MS. HUGHEY: I am, Your Honor, and I promise to be</p> <p>5 much slower this time.</p> <p>6 THE COURT: Because if you don't, you're going to get</p> <p>7 knee-capped but not buy me.</p> <p>8 Let's see. Is this a good place for the court</p> <p>9 reporters to switch and for us to take a little recess?</p> <p>10</p> <p>11 (Recess taken.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">2852</p> <p>1 the documents demonstrated and the witnesses testified</p> <p>2 regarding the features and functionality of the prior</p> <p>3 art RIMS system disclosed in the '989 patent.</p> <p>4 THE COURT: Let's take the anticipation.</p> <p>5 What is it that anticipates?</p> <p>6 MS. HUGHEY: The RIMS system alone</p> <p>7 anticipates every single claim of the patents-in-suit.</p> <p>8 THE COURT: All right.</p> <p>9 MS. HUGHEY: In combination, the RIMS system</p> <p>10 and the TV/2 product render every single one of the</p> <p>11 claims of the patents-in-suit obvious.</p> <p>12 Dr. Shamos went through every single claim</p> <p>13 and explained both the anticipation and obviousness</p> <p>14 analysis. The evidence at trial further demonstrated</p> <p>15 that both systems are prior art.</p> <p>16 The combination of RIMS plus TV/2 renders</p> <p>17 every single asserted claim of the patents-in-suit</p> <p>18 obvious. The preferred embodiment disclosed in the</p> <p>19 patents is the combination of RIMS plus TV/2 and the</p> <p>20 Court's construction is consistent with that.</p> <p>21 The TV/2 literature specifically says to</p> <p>22 combine TV/2 with the parts ordering system and</p> <p>23 inventory management system. The RIMS system</p> <p>24 disclosed in the '989 patent was a part ordering and</p> <p>25 inventory management system.</p>

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<p style="text-align: right;">3246</p> <p>1 doesn't contain the sixth, then it doesn't infringe, so it has 2 to have them all.</p> <p>3 There also are method claims, and those, in this 4 case, are claims 26, 28, and 29 of the '683 patent, and that 5 method claim recites a series of steps that have to be 6 performed, and to infringe a method claim, it must be proved 7 that use of an accused system performs each of the steps as 8 defined in the claim, and, again, they have to prove all of it. 9 If they only prove one out of five, then that's not enough. If 10 they prove five out of six, that's not enough.</p> <p>11 Now, you've also heard some evidence from the experts 12 about independent and dependent claims. An independent claim 13 simply recites its own elements or steps and does not refer to 14 any other claim. A dependent claim includes all the elements 15 or steps of another claim, that is the claim from which it 16 depends, plus one or more other elements or steps.</p> <p>17 So it will say a system comprising or a method 18 comprising or method for doing this as recited in claim one 19 which also, or that also does, and that's a dependent claim 20 because it recites the claim that it comes from.</p> <p>21 A dependent claim, of course, is infringed only if 22 all elements or the steps of the independent claim, as well as 23 the other element listed in the dependent claim, are shown to 24 exist in an accused system or method. So in other words, to 25 prove infringement of the dependent claim, you have to prove,</p>	<p style="text-align: right;">3248</p> <p>1 of the rights that ePlus has in its patents, that anybody has 2 in their patents.</p> <p>3 Now, those instructions -- I mean those patents are 4 in your notebook, and each of the claims that are at issue are 5 highlighted in yellow, and I've defined the claim terms, and 6 you have to use those terms, and they are in your notebook as 7 well, and you use those same definitions in deciding both 8 infringement and invalidity. And the definitions are those as 9 would be given and are understood by one of ordinary skill in 10 the art, and you've heard people talking about.</p> <p>11 One of the few things that I think the parties agreed 12 upon in this case is who was the person of ordinary skill in 13 the art, and that is someone in the field of computer science 14 with an undergraduate Bachelor of Science degree and some 15 practical programming experience, perhaps about a year or two, 16 and having an understanding of the basic principles of supply 17 chain management and procurement during the 1993 to mid 1994 18 time frame.</p> <p>19 If the Court has not given you a definition, then the 20 words of a claim are to be given their usual and ordinary 21 meanings. The parts of the patent that precede the claim are 22 called the abstract, and I believe somebody pointed that out to 23 you -- that has some evidentiary value, of course, because it 24 tells you things -- and the written description or 25 specification, but neither the written description nor the</p>
<p style="text-align: right;">3247</p> <p>1 A, that all of the elements of the claim from which it depends 2 are infringed and the one which is new as well. Now, the 3 dependent claims at issue in this case are claim 29 of the '683 4 patent, and claims two, six, and 22 of the '516 patent.</p> <p>5 These instructions are numbered. If you need to know 6 that, all of this is recited for you in instruction number 17 7 so you can identify, but you can also tell by the language they 8 use as well.</p> <p>9 And all of the other claims here are independent 10 claims. The claims here, all of them actually, whether they 11 are system claims or method claims, use the term comprising. 12 Comprising simply means including but not limited to or 13 contain. Thus, claims that contain the word comprising cover 14 any accused system or method that includes the elements of the 15 claims even if that accused method or system includes 16 additional functionality or steps.</p> <p>17 What is important is whether the accused system or 18 method of a claim using the term comprising includes all the 19 elements of the claim. If it does, then infringement is proved 20 even if the accused system or method includes even more 21 functionality or features.</p> <p>22 Now, to decide the issues of infringement and 23 invalidity, you're going to need to understand the claims of 24 the patents because as both lawyers, I think, have pointed out 25 and was in the video before, the claims define the boundaries</p>	<p style="text-align: right;">3249</p> <p>1 abstract nor the drawings, which are called figures, can be 2 infringed. The infringement is of the claims, not the things 3 that precede the claims, and that's what you are looking at.</p> <p>4 The term published by a vendor was used, and I'll 5 remind you of that definition. I think they read it, and you 6 probably have it perfectly in mind now, but published by a 7 vendor is used in the definition of the claim term 8 catalog/product catalog.</p> <p>9 Published simply means to make generally known. 10 Published by a vendor simply means that at some point in time, 11 a vendor, such as a supplier, a manufacturer, or a distributor, 12 has made generally known or has disclosed an organized 13 collection of items and associated information, preferably but 14 not necessarily including the part number, price, catalog 15 number, vendor name, vendor ID, a textual description of the 16 items, and images of or relating to the item.</p> <p>17 Now, two of the claims here contain what is referred 18 to as means for performing a stated function in the elements, 19 and you've got those interpreted in your book as well. Claim 20 three of the '683 patent and claim one of the '172 patent have 21 elements that also include the means plus function 22 requirements.</p> <p>23 That term, means for, has a special meaning in patent 24 law. One example is that claim three of the '683 patent uses 25 the phrase means for selecting the product catalogs to search.</p>

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<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. 7 : 3:09CV620 8 vs. : 9 : 10 : 11 : 12 : 13 : 14 : 15 : 16 : 17 : 18 : 19 : 20 : 21 : 22 : 23 : 24 : 25 : 26 : 27 : 28 : 29 : 30 : 31 : 32 : 33 : 34 : 35 : 36 : 37 : 38 : 39 : 40 : 41 : 42 : 43 : 44 : 45 : 46 : 47 : 48 : 49 : 50 : 51 : 52 : 53 : 54 : 55 : 56 : 57 : 58 : 59 : 60 : 61 : 62 : 63 : 64 : 65 : 66 : 67 : 68 : 69 : 70 : 71 : 72 : 73 : 74 : 75 : 76 : 77 : 78 : 79 : 80 : 81 : 82 : 83 : 84 : 85 : 86 : 87 : 88 : 89 : 90 : 91 : 92 : 93 : 94 : 95 : 96 : 97 : 98 : 99 : 100 : 101 : 102 : 103 : 104 : 105 : 106 : 107 : 108 : 109 : 110 : 111 : 112 : 113 : 114 : 115 : 116 : 117 : 118 : 119 : 120 : 121 : 122 : 123 : 124 : 125 : 126 : 127 : 128 : 129 : 130 : 131 : 132 : 133 : 134 : 135 : 136 : 137 : 138 : 139 : 140 : 141 : 142 : 143 : 144 : 145 : 146 : 147 : 148 : 149 : 150 : 151 : 152 : 153 : 154 : 155 : 156 : 157 : 158 : 159 : 160 : 161 : 162 : 163 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996 : 997 : 998 : 999 : 1000 :</p>	<p>1 PROCEEDINGS 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and 6 Mr. Michael G. Strapp represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, Mr. William D. Schultz represent the 9 defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Yes, Your Honor. 11 MR. McDONALD: Yes, Your Honor. 12 THE COURT: All right. I was very sorry to hear 13 about Ms. Albert's father passing away. You all both wrote 14 letters about it. I don't see the point in bringing that to 15 the attention the jury. Do either one of you? 16 In the old days, when people didn't do what they were 17 supposed to do, they got keelhaunched. I'm about ready to 18 institute that procedure here. It's time for the jury to get 19 going, and I've had to read all this stuff now. I told you 20 what to do about this verdict form, and it was pretty easy, and 21 it's unnecessary to go through all this stuff. 22 Now, apparently we're going to have to revise it 23 anyway because -- and some of the instructions. What 24 instructions have to be revised because Lawson is not 25 contending that the RIMS brochure is prior art? Which one is</p>
<p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 arguing? 2 MR. YOUNG: Your Honor, David Young for ePlus. It's 3 instruction 3-A that was submitted to the Court over the 4 weekend. It lists as I think reference number three, RIMS 5 brochure, and that would have to come out now because it 6 appears that Lawson does not have that as an anticipated 7 reference on its own verdict form. 8 THE COURT: Is that right? 9 MR. McDONALD: Yes, that's right, Your Honor. 10 THE COURT: So I suppose I need to tell the jury 11 simply to disregard any testimony about the RIMS brochure as 12 prior art. 13 MR. McDONALD: No, it not anticipatory prior art 14 meaning it's not all by itself anticipating a claim. We're 15 still using it for obviousness and support for the on sale, the 16 RIMS as prior art and 102(a) and (b), but the brochure, all by 17 itself, we're not contending is an anticipating reference, but 18 it would be used to support number one in the instruction which 19 is the Fisher RIMS system as prior art. 20 THE COURT: What do you mean, to be used to support? 21 If you're going to use it -- 22 MR. McDONALD: It's evidence of the Fisher RIMS 23 system as it was being sold and -- 24 THE COURT: Well, if it's evidence of it, it comes 25 out of 39, too, because you're not contending that it is</p>